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Legislative Bulletin………………………………..………February 16, 2007

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: $0

Effect on Revenue: $45 million tax increase over the FY2007-FY2017 period

Total Change in Mandatory Spending: $0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of *Bills* Without Committee Reports: 1

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 976—Small Business Tax Relief Act (*Rangel, D-NY*)

Order of Business: The bill is scheduled to be considered on the House floor on Friday, February 16th, under a motion to suspend the rules and pass the bill. This process is a violation of House Rules, and thus a special rule (H.Res. 161) must be passed to allow the consideration of this one suspension on a Friday: http://www.rules.house.gov/SpecialRules_details.aspx?NewsID=2513. House Rule XV, Clause 1(a) provides that suspensions can only be considered on Mondays, Tuesdays, and Wednesdays—and during the last six days of a session of Congress.

Summary (as passed by the Ways & Means Committee): H.R. 976 would ***permanently*** increase taxes on some taxpayers to "pay for" ***temporary*** tax cuts for other taxpayers. The bill, as scored by the Joint Committee on Taxation, would yield a **net tax increase** of $225 million over the FY2007-FY2012 period, and a **net tax increase** of $45 million over the FY2007-FY2017 period: http://www.house.gov/jct/x-8-07.pdf. Highlights of the legislation are as follows:

TAX INCREASES and SHIFTS:
Costs taxpayers $1.380 billion over the FY2007-FY2017 period.

- **Denies the lowest maximum capital gains tax rate for certain minors and adults.** Beginning in tax-year 2007, taxpayers would be denied the lowest maximum capital gains and dividends tax rate (5% in 2007, 0% in 2008, 0% in 2009, 0% in 2010, and 8% or 10% thereafter) if they are under age 19 (age 24, in the case of a student) and if their earned income is less than half of their financial support (i.e., if they are more than 50% dependent on their family's financial support). **Increases taxes by $874.0 million over the FY2007-FY2017 period.**

- **Extends the suspension of interest payments due to the IRS.** Beginning six months after this legislation's enactment, taxpayers who underpay their taxes and are subject to interest penalties on the unpaid amounts would not have their interest payments suspended until 22 months after the IRS has failed to contact the taxpayers about the underpayments (as opposed to the current-law 18 months). Under current law, the interest begins to accumulate on April 15 of the year the taxes were due. Interest suspensions ends when the IRS notifies the taxpayer of the underpayment. **Increases taxes by $506.0 million over the FY2007-FY2017 period.**

- **Adjusts the deadlines for corporate estimated tax payments.** Increases the corporate estimated tax payments due in the summer of FY2012 for corporations with assets of at least $1 billion. This provision does not yield a net tax increase; it merely requires a higher quarterly payment of corporate estimated taxes in the summer of 2012, and a correspondingly lowered estimated payment thereafter. Last year's tax reconciliation bill (Public Law 109-222) included a similar tax-payment shift. That is, under current law, the estimated payments due in the summer of FY2012 have to be 106.25% of what would otherwise be paid (100% = one quarter of the year's estimated tax payment due). H.R. 976 would increase that amount from 106.25% to 112.75%, requiring businesses to pay even more of their taxes early. **Estimated to capture $4.026 billion in additional revenues in FY2012, yet reduce revenues by the same amount in FY2013, yielding a net zero score over the FY2007-FY2017 period.**

TAX CUTS:
Saves taxpayers $1.335 billion over the FY2007-FY2017 period

- **Extends and expands the Work Opportunity Tax Credit (WOTC).** The WOTC would be extended for one year (through the end of 2008), as modified. The WOTC allows employers to claim the maximum $2,400 credit when they hire individuals from nine "target" groups (such as families receiving public assistance, high-risk youths, ex-felons, qualified veterans, and food stamp recipients age 18-39). The credit applies only to cash wages. H.R. 976 would expand the qualified veterans' targeted group to include a disabled individual who has a hiring date that is not more than one year after having been discharged or released from active duty in the U.S. Armed Forces, or has been unemployed for six months or more (whether or not consecutive) during the one-year period ending on the date of hiring. The amount of qualified first-year wages for disabled veterans would be $6,000, instead of $12,000, thus doubly the effective credit for hiring a disabled veteran. H.R. 976 would also expand the high-risk youth targeted group (to individuals that have a maximum age of 39, instead of current-law 25), as well as the vocational rehabilitation targeted group. **Saves taxpayers $695.0 million over the FY2007-FY2017 period.**

- **Extends section 179 expensing**. Extends the sunset date for one year (from the end of 2009 to the end of 2010) for the expanded Section 179 expensing provisions in current law. Presently, small businesses may expense (i.e., deduct in the first year) up to $112,000 of certain asset investments, phasing out dollar-for-dollar to the extent the business' annual investments exceed $450,000. H.R. 976 would also immediately increase the $112,000 and $450,000 thresholds to $125,000 and $500,000, and index them for inflation through and including 2010. After 2010, the expensing limit will decline to $25,000 and the phase-out threshold will decline to $200,000. **Saves taxpayers $68.0 million over the FY2007-FY2017 period (but $3.5 billion over the FY2007-FY2012 period).**

- **Extends the restaurant tip credit.** The restaurant tip credit would be extended at the current level of $5.15 per hour. The federal minimum wage under the Fair Labor Standards Act (FLSA) is $5.15 per hour. In the case of tipped employees, the FLSA provides that the minimum wage may be reduced to $2.13 per hour if the combination of tips and cash income equals the federal minimum wage. Under current law, employee tip income is treated as employer-provided wages for purposes of the Federal Insurance Contributions Act (FICA). A business tax credit is provided equal to an employer's FICA taxes paid on tips in excess of those treated as wages for purposes of meeting the minimum wage requirements of FLSA. If this provision were not included in the bill, restaurants would not be able to claim the tip credit on payroll taxes paid for tipped employees on income between $5.15 and a new higher hourly minimum wage. Because H.R. 976 does not include an increase in the minimum wage (that was included in H.R. 2), the Joint Committee on Taxation scores this provision as having no revenue effect. However, if a minimum wage increase were included in H.R. 976, more employer-provided wages would be subject to the tip credit, and thus this provision would be scored as providing some tax relief (reportedly as much as $400 million over the FY2007-FY2017 period) from the restaurant tip credit extension. **No revenue implications as currently written.**

- **Allows the WOTC and the tip credit to be claimed against the Alternative Minimum Tax (AMT).** Generally, business tax credits cannot be used to offset any liability under the AMT. H.R. 976 would allow the WOTC and the restaurant tip credit to offset tax liability under the AMT beginning in tax-year 2007. **Saves taxpayers $572.0 million over the FY2007-FY2017 period.**

- **Adjusts the self-employment taxes of married couples.** H.R. 976 would allow a qualified joint venture whose only members are a husband and wife filing a joint return not to be treated as a partnership for tax purposes (as they currently are required to do). A qualified joint venture is a joint venture involving the conduct of a trade or business, if the only members of the joint venture are a husband and wife, both spouses materially participate in the trade or business, and both spouses elect to have the provision apply. Income, gains, losses, deductions, and credits would be divided between the spouses according to their respective venture interests. Each spouse would then account for his or her share on the appropriate form. **Negligible savings to taxpayers.**

Additional Background: On January 10, 2007, the House passed H.R. 2, a bill raising the federal minimum wage by 41% over two-plus years. On February 1, 2007, the Senate amended H.R. 2 by adding a variety of tax incentives for small businesses and then passing the bill 94-3. Because revenue bills must originate in the House (see Article I, Section 7, Clause 1 of the U.S. Constitution), and because H.R. 2 did not have tax provisions in it, H.R. 976, once it passed the House, will presumably be used as a vehicle into which can insert its provisions of H.R. 2 and ask for a conference on H.R. 976 with the House. The conference will have to primarily address the tax provisions because the tax language in the Senate-passed H.R. 2 is markedly different from that in H.R. 976. The minimum wage language is the same in the House and Senate versions of H.R. 2.

RSC Bonus Fact: If H.R. 976 included language raising the federal minimum wage, it would yield a larger tax cut (possibly as much as $400-500 million over the FY2007-FY2017 period) from the restaurant tip credit extension (see discussion above) and thus make the consideration of H.R. 976 subject to a PAYGO point of order (House Rule XXI, Clause 10), if it were not being considered on suspension.

This potential minimum wage link is where news reports about this bill's supposed $1.8 billion in tax cuts comes from ($1.34 billion in actual tax cuts over 11 years plus a possible $400-$500 million additional tax cut **if** this bill were merged with a minimum wage increase).

Committee Action: On February 9, 2007, the bill was referred to the Committee on Ways & Means, which, on February 12, 2007, marked-up and ordered the bill reported to the full House by voice vote with no amendments considered (beyond the chairman's amendment in the nature of a substitute, which was only slightly different from the chairman's mark).

Possible Conservative Concerns: Some conservatives may be concerned that the Joint Committee on Taxation's revenue estimate for this bill shows a net tax increase over the FY2007-FY2012 period and over the FY2007-FY2017 period. Some conservatives may also be concerned with *permanently* increasing taxes on some taxpayers to "pay for" *temporary* tax cuts for other taxpayers. Additionally, some conservatives may be concerned that H.R. 976 is being used as a vehicle to make it **easier** to pass a 41% increase in the federal minimum wage. Furthermore, the bill chips away at the capital gains and dividends tax cut (by preventing certain students under age 24 and certain non-students under age 19 from getting the lowest rate available under current law), while effectively increasing interest penalties for certain taxpayers, and accelerating certain quarterly tax payments for corporations.

Administration Position: The Statement of Administration Policy (SAP), among other things states that:

- "The Administration supports House passage of H.R. 976 as a step toward legislation to increase the minimum wage by $2.10 over two years, but believes the bill should be strengthened by adding additional small business tax relief to mitigate potential job loss."
- "The Administration does not think it is necessary to tie this small business tax relief to revenue increases."

http://www.whitehouse.gov/omb/legislative/sap/110-1/hr976sap-h.pdf

Cost to Taxpayers: The Joint Committee on Taxation estimates that H.R. 976 would:

- Reduce taxes by $162 million in FY2007;
- Reduce taxes by about $5.798 billion over the FY2007-FY2011 period;
- Increase taxes by $225 million over the FY2007-FY2012 period;
- Reduce taxes by about $263 million over the FY2007-FY2016 period; and
- Increase taxes by $45 million over the FY2007-FY2017 period.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks and Limited Tax Benefits?: Although a statement about any limited tax benefits in the bill, as required by House Rule XXI, Clause 9(a), remains unavailable, such a statement is not necessary, by definition, for legislation considered under suspension of the rules.

Constitutional Authority: A committee report citing constitutional authority was unavailable at press time.

Outside Organizations: Americans for Tax Reform is remaining officially silent on this legislation (because the net score is nearly zero over 11 years), while the National Taxpayers Union is opposing the legislation (because of the net tax increases and the facilitation of the minimum wage increase), and the U.S. Chamber of Commerce is supporting the legislation.

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